

United States Senate

WASHINGTON, DC 20510

May 14, 2014

496

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler:

We write to express our strong reservations with the Federal Communications Commission proceeding to a vote on proposing net neutrality rules at its May 15, 2014 meeting. Both the Commission and Congress should have sufficient time to review any proposal on net neutrality prior to further action.

Commissioners Jessica Rosenworcel and Ajit Pai have both called for a delay of the vote. Our understanding, as reported by *Politico*, is that minority members of the Commission have been kept in the dark about your revised net neutrality proposal. Transparency is paramount in this process, and forcing through regulations in a non-transparent way does a disservice to consumers, businesses, and American taxpayers.

To date, the commission has received over 35,000 public comments since your original proposal was first made public. We believe a more thorough examination of your proposal, including a rigorous economic analysis, is required.

Additionally, we believe the complexity and unprecedented nature of the upcoming broadcast incentive auction warrants the Commission's full and undivided attention at this critical time. This is necessary to ensure the bipartisan congressional mandates contained in the Public Safety and Spectrum Act of 2012 are properly executed.

Thank you for your prompt consideration. We look forward to working with you on this and other important challenges facing the Commission.

Sincerely,



Kelly Ayotte
United States Senator



Dan Coats
United States Senator



Deb Fischer
United States Senator



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 30, 2014

The Honorable Kelly Ayotte
United States Senate
144 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Ayotte:

Thank you for contacting me with your views regarding the Commission's efforts to reinstate rules to preserve and protect the Open Internet. As you know, the *Notice of Proposed Rulemaking* ("Notice") adopted by the Commission in May 2014 proposes rules that would replace those struck down early this year by the U.S. Court of Appeals for the D.C. Circuit in its *Verizon* decision, and we ask a number of questions about the appropriate legal foundation for such rules. Your letter will be included in the record of the proceeding and considered as part of the Commission's review.

The Commission has been working for more than a decade to safeguard the Open Internet. While there has been a bipartisan consensus, starting under the Bush Administration with Chairman Powell, on the importance of an open Internet to economic growth, investment, and innovation, we find ourselves today without any rules in place to protect and promote Internet openness. The *status quo* is unacceptable. Unless and until the FCC adopts new rules, broadband providers will be free to block, degrade, or otherwise disadvantage innovative services on the Internet without threat of sanction by the FCC. As Chairman, I will utilize the best tools available to me to ensure the Commission adopts effective and resilient open Internet rules.

The court's decision in *Verizon* established unequivocally that the Commission has the legal authority under Section 706 of the Telecommunications Act of 1996 to craft enforceable rules to protect and promote an open Internet for all Americans. Specifically, the court agreed with the Commission's conclusion that an open Internet enables a virtuous cycle of investment and broadband deployment – *i.e.*, that innovative content and services at the edges of the network drive consumer demand for broadband services, which drives investment in broadband infrastructure and deployment, which drives more innovation at the network's edges, and so on. The court affirmed that it is the Commission's responsibility to protect this virtuous cycle and that Section 706 authorizes us to do so.

I believe that the Section 706 framework set forth by the court provides us with the tools we need to adopt and implement robust and enforceable Open Internet rules. For this reason, the *Notice* used the court's legal blueprint as a starting point. Nevertheless, the Commission also is seriously considering the use of Title II of the Communications Act as the basis for legal authority. The *Notice* explains that both Section 706 and Title II are viable solutions to the

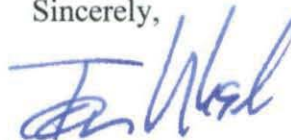
authority issue, and seeks comment on the benefits of each approach, as well as the benefits of one approach over the other, to ensuring that the Internet remains an open platform for innovation and expression. Additionally, the *Notice* seeks comment on other proposals suggesting the Commission could apply both Section 706 and Title II to component parts of broadband Internet access services.

The attention paid to this topic in the lead-up to our May Open Meeting is proof of why the open and free exchange of information must be encouraged. It is important that the *Notice* was reported out by the Commission so that the public can review the proposal and provide comments. Further delay would have only delayed the opportunity for public review and input. In addition, we have an extended comment period until September 10, 2014 so that there will be ample time for expression of views on the item.

This *Notice* is the first step in the process, and I look forward to comments from all interested stakeholders, including members of the general public, as we develop a fulsome record on the legal authority and many other questions raised in the *Notice*. To that end, in an effort to maximize public participation in this proceeding, we have established an Open Internet email address – openinternet@fcc.gov – to ensure that Americans who may not otherwise have the opportunity to participate in an FCC proceeding can make their voices heard. In addition, to ensure sufficient opportunity for broad public comment, we have provided a lengthy comment and reply period that will give everyone an opportunity to participate.

Again, I appreciate your deep interest in this matter and look forward to a continued engagement with you and others in Congress as we move forward with this proceeding.

Sincerely,



Tom Wheeler



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 30, 2014

The Honorable Dan Coats
United States Senate
493 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Coats:

Thank you for contacting me with your views regarding the Commission's efforts to reinstate rules to preserve and protect the Open Internet. As you know, the *Notice of Proposed Rulemaking* ("Notice") adopted by the Commission in May 2014 proposes rules that would replace those struck down early this year by the U.S. Court of Appeals for the D.C. Circuit in its *Verizon* decision, and we ask a number of questions about the appropriate legal foundation for such rules. Your letter will be included in the record of the proceeding and considered as part of the Commission's review.

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authority issue, and seeks comment on the benefits of each approach, as well as the benefits of one approach over the other, to ensuring that the Internet remains an open platform for innovation and expression. Additionally, the *Notice* seeks comment on other proposals suggesting the Commission could apply both Section 706 and Title II to component parts of broadband Internet access services.

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Sincerely,



Tom Wheeler



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

June 30, 2014

The Honorable Deb Fischer
United States Senate
825 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Fischer:

Thank you for contacting me with your views regarding the Commission's efforts to reinstate rules to preserve and protect the Open Internet. As you know, the *Notice of Proposed Rulemaking* ("Notice") adopted by the Commission in May 2014 proposes rules that would replace those struck down early this year by the U.S. Court of Appeals for the D.C. Circuit in its *Verizon* decision, and we ask a number of questions about the appropriate legal foundation for such rules. Your letter will be included in the record of the proceeding and considered as part of the Commission's review.

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Sincerely,

A handwritten signature in dark ink, appearing to read "Tom Wheeler", with a stylized, cursive script.

Tom Wheeler